

1 Adopt 2 Cal. Code Regs. section 18361.10 to read:

2 **§ 18361.10. Administratively Adjudicated Enforcement Decisions As Precedent.**

3 (a) This regulation applies to administratively adjudicated enforcement decisions
4 under the provisions of Government Code section 11425.60. The Commission may
5 designate as a precedent decision part or all of a decision that contains a significant legal
6 or policy determination of general application that is likely to recur. The Commission
7 may also overrule its prior precedent designations. Such a designation or overruling
8 thereof may be made upon the Commission's own motion, or at the request of {Decision
9 **Point 1}** [a party/ any person].

10 (b) The Commission shall maintain an index of significant legal and policy
11 determinations contained in precedent decisions.

12 (1) The index shall be updated at least annually, unless no new precedent
13 decisions were designated or overruled that year.

14 (2) The index shall be made available to the public by subscription and on its
15 website.

16 (3) The availability of the index shall be publicized annually in the California
17 Regulatory Notice Register.

18 (c) In determining whether all or part of a decision should be designated or
19 overruled as a precedent decision, the Commission may consider whether the decision:

20 (1) Addresses a legal or factual issue of general public interest;

21 (2) Resolves a conflict in the law;

22 (3) Provides an overview of existing law or policy;

23 (4) Clarifies existing law or policy;

1 (5) Establishes a new rule of law or policy; or

2 (6) Would be more appropriately addressed by regulatory amendment, the advice
3 process, or the opinion process.

4 **{Decision Point 2}** [(d) The Commission may decide whether to designate or
5 overrule as precedent all or part of a decision at any Commission meeting held after a
6 decision becomes final **{Decision Point 2a}** [, except as provided for in subdivision (e)].
7 For purposes of this regulation, a decision becomes “final” at the time a petition for
8 reconsideration has been exhausted pursuant to 2 Cal. Code Regs. section 18361.9(c).

9 (e) **{Decision Point 1}** [A party/ Any person] may submit a request that a
10 decision be deemed precedent, or that a prior designation as precedent be overruled,
11 pursuant to the following procedures:

12 (1) The request shall be in the form of a concise written brief stating **{Decision**
13 **Point 1}** [the person’s interest and] the reasons why all or part of a decision should be
14 designated precedent, or why such prior designation should be overruled.

15 (2) Where the Commission has not acted to either designate or overrule all or part
16 of a decision within 30 days of its becoming final, the request shall be delivered to the
17 Executive Director of the Commission no later than 60 days after the decision becomes
18 final. However, where the Commission has designated or overruled all or part of a
19 decision as precedent, the request shall be delivered to the Executive Director within 30
20 days of such action. The Executive Director will then deliver all requests timely made to
21 the Commissioners, the Chief of the Enforcement Division, and all reasonably available
22 parties to the decision. Within 60 days of delivery of the requests to the Commission, it

1 may decide which part or parts, if any, of the final decision will be designated as
2 precedent or overruled.

3 (f) The designation or overruling of all or part of a decision as precedent is not
4 rulemaking. The Commission's designation of all or part of a decision, or the lack of
5 such designation, as precedent is not subject to judicial review.

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8 Note: Authority cited: Sections 83112, Government Code.

9 Reference: Sections 83111 and 83116, Government Code.

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